

**IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

JOHNNY OLDCHIEF,

Plaintiff,

vs.

KEN BIRDRASSLER, ISIA WEBER,
THE STATE OF MONTANA, and
UNITED STATES OF AMERICA,

Defendants.

CV-18-92-GF-BMM-JTJ

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS**

Plaintiffs Johnny Old Chief and Maynard Old Chief alleged that Defendants Ken BirdRattler and Isia Weber conducted a warrantless arrest, used excessive force, entered private property without probable cause, falsely arrested Plaintiffs, and prepared a false incident report which caused Plaintiffs to face lengthy sentences had they elected to proceed to a jury trial, compelling Plaintiffs to enter a plea agreement. (Complaint, Doc. 1 at 1-2).

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on July 5, 2018. (Doc. 4). Judge Johnston severed the Johnny Old Chief and Maynard Old Chief's claims into two separate cases. (Doc. 4 at 13-14). Maynard Old Chief's claims were severed and directed

to Civil Action No. 18-CV-94-GF-BMM-JTJ. *Id.* Judge Johnston recommended that both matters be dismissed. *Id.* at 15. Judge Johnston further recommended that the Clerk of the Court be directed to close the matters and enter judgement pursuant to Rule 58 of the Federal Rules of Civil Procedure. *Id.* Judge Johnston recommended that the Clerk of the Court be directed to have the docket reflect that the Court certified that any appeal of this decision should not to be taken in good faith pursuant to Rule 24(a)(3)(A). *Id.*

The Court reviews de novo Findings and Recommendations timely objected to. 28 U.S.C. § 636(b)(1). The Court reviews for clear error the portions of the Findings and Recommendations not specifically objected to. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Where a party's objections constitute perfunctory responses argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original response, however, the Court will review the applicable portions of the findings and recommendations for clear error. *Rosling v. Kirkegard*, 2014 WL 693315 *3 (D. Mont. Feb. 21, 2014) (internal citations omitted).

Plaintiff Johnny Old Chief filed no objection to Judge Johnston's Findings and Recommendations. The Court has reviewed the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in

Judge Johnston's Findings and Recommendations and adopts them in full.

ORDER

Accordingly, **IT IS ORDERED** that Magistrate Judge Johnston's Findings and Recommendations (Doc. 4) are **ADOPTED IN FULL**.

IT IS ORDERED that Plaintiff's action is **DISMISSED**.

IT IS FURTHER ORDERED that the Clerk of the Court be directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision will not be taken in good faith.

DATED this 16th day of November, 2018.



Brian Morris
United States District Court Judge